H.313

Introduced by Representatives Donovan of Burlington, Aswad of Burlington, Buxton of Royalton, Davis of Washington, Lenes of Shelburne, Macaig of Williston, Mitchell of Barnard, Peltz of Woodbury and Shand of Weathersfield

Referred to Committee on

Date:

Subject: Health care facilities; patient safety

Statement of purpose: This bill proposes to improve patient safety by requiring hospitals and nursing home facilities to establish a safe patient handling program and by prohibiting mandatory overtime for certain health care employees.

An act relating to patient safety

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. Part 3, chapter 58 is added to read:

CHAPTER 58. SAFE PATIENT HANDLING

§ 2501. LEGISLATIVE FINDINGS AND INTENT

The general assembly finds:
(1) Patients are at greater risk of injury, including skin tears, falls, and musculoskeletal injuries, when being lifted, transferred, or repositioned manually.

(2) Safe patient handling can reduce skin tears suffered by patients by threefold and can significantly reduce other injuries to patients as well.

(3) Without adequate resources such as special equipment and specially trained staff, lifting patients, whether the patients are overweight or not, increases the risk of injury to the patients and health care providers when the patient is being moved, being repositioned, or receiving other care. Fifty-nine percent of Vermont adults are overweight or obese, which substantially increases risks for many chronic diseases.

(4) Health care workers lead the nation in work-related musculoskeletal disorders. Chronic back pain and other job-related musculoskeletal disorders contribute significantly to the decision by nurses and other health care workers to leave their professions, which exacerbates the shortage of health care workers.

(5) Research indicates that nurses lift an estimated 1.8 tons per shift. Eighty-three percent of nurses work in spite of back pain, and 60 percent of nurses fear a disabling back injury. Twelve percent to 39 percent of nurses not yet disabled are considering leaving nursing due to back pain and injuries.
(6) Safe patient handling reduces injuries and costs. In nine case studies evaluating the impact of lifting equipment, injuries decreased 60 percent to 95 percent; lifting and handling was reduced by 98 percent.

(7) Studies show that manual patient handling and movement negatively affect patient safety, quality of care, and patient comfort, dignity, and satisfaction.

(8) The American Hospital Association has stated that work-related musculoskeletal disorders account for the largest proportion of workers’ compensation costs in hospitals and long-term care facilities.

(9) Studies demonstrate that assistive patient handling technology reduces workers’ compensation and medical treatment costs for musculoskeletal disorders among health care workers, and that employers can recoup their initial investment in equipment and training within three years.

§ 2502. DEFINITIONS

As used in this chapter:

(1) “Clinical care services” means the diagnostic, treatment, or rehabilitative services provided in a health care facility including: radiology and diagnostic imaging, such as magnetic resonance imaging and positron emission tomography; radiation therapy; phlebotomy; electrocardiogram and electroencephalography; and laboratory medical services.
(2) “Health care facility” shall mean a hospital licensed under chapter 43 of this title or a nursing home licensed under chapter 71 of Title 33.

(3) “Lift team” means health care facility employees specially trained to perform patient lifts, transfers, and repositioning in accordance with safe patient handling policy.

(4) “Musculoskeletal disorders” means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(5) “Safe patient handling” means the use of engineering controls, transfer aids, or assistive devices whenever feasible and appropriate instead of manual lifting to perform the acts of lifting, transferring, or repositioning health care patients and residents.

(6) “Safe patient handling policy” means protocols established to implement safe patient handling.

§ 2503. SAFE PATIENT HANDLING PROGRAM

(a) A safe patient handling program shall include:

(1) a safe patient handling policy on all units and for all shifts that, consistent with patient safety and well-being, restricts unassisted patient handling of all or most of a patient’s weight to situations in which a patient is in need of immediate attention or in which the use of assisted patient handling would jeopardize the safety of the patient;
(2) an assessment of the safe patient handling assistive devices needed
to carry out the facility’s safe patient handling policy;

(3) the purchase of safe patient handling equipment and patient handling
aids necessary to carry out the safe patient handling policy;

(4) protocols and procedures for assessing and updating the appropriate
patient handling requirements of each patient of the facility;

(5) a plan for assuring prompt access to and availability of mechanical
patient handling equipment and patient handling aids on all units and all shifts;

(6) a provision requiring that all such equipment and aids be stored and
maintained in compliance with their manufacturers’ recommendations;

(7) a training program for health care workers at no cost that:

(A) covers the identification, assessment, and control of patient
handling risks; the safe, appropriate, and effective use of patient handling
equipment and aids; and proven safe patient handling techniques;

(B) requires trainees to demonstrate proficiency in the techniques and
practices presented;

(C) is provided during paid work time; and

(D) is conducted upon commencement of the health care facility’s
safe patient handling program and at least annually thereafter, with appropriate
interim training for individuals beginning work between annual training
sessions;
(8) educational materials for patients and their families to help orient them to the facility’s safe patient handling program;

(9) an annual report to the safe patient handling committee of the health care facility and to the department of banking, insurance, securities, and health care administration, which shall be made available to the public upon request, on activities related to the identification, assessment, development, and evaluation of strategies to control risk of injury to patients, nurses, and other health care workers associated with the lifting, transferring, repositioning, or movement of a patient;

(10) posting of the safe patient handling policy in a location easily visible to staff, patients, and visitors; and

(11) a designated representative of the facility who shall be responsible for overseeing all aspects of the safe patient handling program.

(b) A health care facility shall conduct an annual evaluation of the program and make revisions to the program based on data analysis and feedback from the facility’s health care workers.

(c) A health care facility shall purchase the equipment and aids determined necessary to carry out its safe patient handling policy and conduct the initial training as required in this section within 24 months of the effective date of this act.
(d) Nothing in this section precludes lift team members from performing other duties as assigned during their shifts.

§ 2504. RETALIATION

A covered health care facility shall not retaliate against any health care worker because that worker refuses to perform a patient handling task due to a reasonable concern about worker or patient safety or the lack of appropriate and available patient handling equipment or aids.

§ 2505. PATIENT HANDLING COMMITTEE

(a) Each licensed health care facility shall establish a safe patient handling committee which shall be responsible for all aspects of the development, implementation, and periodic evaluation and revision of the facility’s safe patient handling program, including the evaluation and selection of patient handling equipment and aids and other appropriate engineering controls. The committee shall be chaired by a professional nurse or other appropriate licensed health care professional. A health care facility may utilize any appropriately configured committee to perform the responsibilities of this section. At least 50 percent of the members of the committee shall be health care workers who provide direct patient care to patients at the facility or are otherwise involved in patient handling at the facility. In a facility where health care workers are represented by a collective bargaining agent, the collective bargaining agent shall select the health care worker committee members. The
remaining members of the committee shall have experience, expertise, or responsibility relevant to the operation of a safe patient handling program.

(b) An employee may, in accordance with established facility protocols, report to the committee, as soon as possible, after being required to perform a patient handling activity that he or she believes in good faith exposed the patient or employee, or both, to an unacceptable risk of injury. Such employee reporting shall not be cause for discipline or be subject to other adverse consequences by his or her employer. These reportable incidents shall be included in the facility’s annual performance evaluation.

§ 2506. DETERMINATION OF NEED FOR NEW HEALTH CARE EQUIPMENT AND NEW INSTITUTIONAL HEALTH SERVICES

A health care facility which develops or offers new health care equipment or new institutional health services in Vermont shall consider the proposed availability and use of safe patient handling equipment in the new or renovated space to be constructed.

Sec. 2. 18 V.S.A. Part 3, chapter 59 is added to read:

CHAPTER 59. PROHIBITION ON MANDATORY OVERTIME

§ 2601. DEFINITIONS

As used in this chapter:

(1) “Employee” means an individual employed by a health care facility who is involved in direct patient care activities or clinical care services and
who receives an hourly wage or is classified as a nonsupervisory employee for
collective bargaining purposes. The term does not include a physician,
physician assistant, dentist, or worker involved in environmental services,
clerical, maintenance, food service, or other job classification not involved in
direct patient care and clinical care services.

(2) “Health care facility” shall mean a hospital licensed under chapter 43
of this title or a nursing home licensed under chapter 71 of Title 33.

(3) “Reasonable efforts” means attempts by a health care facility to:

(A) seek persons who volunteer to work extra time from all available
qualified staff who are working at the time of the unforeseeable circumstance;

(B) contact all qualified employees who have made themselves
available to work extra time; and

(C) seek the use of per diem or float pool staff.

(4) “Unforeseeable emergency circumstance” means any declared
national, state, or municipal disaster or other catastrophic event or any
implementation of a hospital’s disaster plan that will substantially affect or
increase the need for health care services or any circumstance in which patient
care needs require specialized nursing skills through the completion of a
procedure. An unforeseen emergency circumstance does not include situations
in which the health care facility fails to have enough nursing staff to meet the
usual and reasonably predictable nursing needs of its patients.
§ 2602. PROHIBITION ON MANDATORY OVERTIME

(a) No health care facility shall require an employee to work in excess of eight hours per day, in excess of 40 hours per week, or in excess of agreed-upon scheduled hours.

(b) Subsection (a) of this section shall not apply when there is an unforeseeable emergency circumstance requiring overtime and the employer has exhausted other reasonable efforts to obtain staff and documented in writing the reasonable efforts taken, and the documentation is provided to the department of banking, insurance, securities, and health care administration. In the event of an unforeseeable emergency circumstance, the health care facility shall provide the employee sufficient time up to one hour to arrange for the care of the employee’s minor children or elderly or disabled family members. If the emergency is a declared national, state, or municipal emergency or other disaster or catastrophic event that substantially affects or increases the need for health care services, the employer is not required to exhaust all reasonable efforts to obtain staff.

(c) An employee may be required to fulfill prescheduled on-call time, but nothing in this chapter shall be construed to permit a health care facility to use on-call time as a substitute for mandatory overtime.

(d) Any mandatory overtime provision in a contract, agreement, or understanding is unenforceable and void as against public policy.
(e) Nothing in this section shall be construed to limit voluntary overtime in excess of an agreed-to, predetermined scheduled work shift.

(f) A health care facility shall not penalize, discharge, dismiss, discriminate against in any way, or take any other adverse employment action against an employee who refuses to accept overtime work.

(g) A health care facility shall post the requirements of this section in a location accessible and visible to the employees and the public.

(h) An employee may file a complaint with the department of banking, insurance, securities, and health care administration for any alleged violation of this section. The complaint shall be filed within 60 days of the incident giving rise to the violation. The department shall notify the health care facility of the alleged violation within three business days after the complaint is filed. The department shall determine whether a violation of this section has occurred and shall levy a penalty of $1,000.00 for each violation.